IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

-

WRIT PETITION NO : 16461 of 1995

Between:

Syed Khader, @ Syed Anwar, S/o. Syed Sardar Ahmed, R/o. 8-3-190/A, Erragadda, Hyderabad.

..... PETITIONER

AND

1 The Collector, Hyderabad District,
Nampally Station Road, Hyderabad.
2 The Mandal Revenue Officer, Golconda Mandal, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more in the nature of Writ of Mandamus, declaring the actions of the respondents herein in seeking to recover possession of the property bearing MCH No. 8-3-190/A, forming part of Sy. No. 49, Yousufguda, Hyderabad, now in petitioner's custody, without recourse to law or notice, as un-reasonable, unjust, illegal and without any valid right in law and pass

Counsel for the Petitioner: MR.V.HARI HARAN

Counsel for the Respondents No. 1&2: GP FOR REVENUE

The Court made the following :

ORDER:

The present writ petition has been filed questioning the action of the respondents in seeking recovery of possession of the property bearing MCH No. 8-3-190/A, forming part of Sy.No.49, which is in the custody of the petitioner without recourse to law or notice as illegal and void.

The brief averments made in the affidavit filed in support of the writ petition are as follows:

It has been stated that the petitioner is a lessee of the land admeasuring 400 sq.yards in Sy.No.49 of Yosufguda village, Hyderabad, having taken the premises from the Managing Committee of the Maqbara Fakar-ul-Mulk, situate adjacent to Vengalrao Nagar Colony, Hyderabad and the property was under the care of the Managing Committee pursuant to the proceedings then pending before this Court in C.S.No. 1 of 1951 and that after obtaining the lease the petitioner put up temporary sheds and obtained electricity connection and had been running a workshop since 1984 by paying the necessary municipal taxes.

It is further stated that while so, without issuing any notice to the petitioner, the A.P.Wakf Board, by claiming the property, tried to demolish the property which is in possession of the petitioner and at that stage the petitioner filed a suit in O.S.No. 3788 of 1992 on the file of III Asst. Judge, City Civil Courts, Hyderabad for an injunction. In the said suit the A.P. Wakf Board claimed title to the property by virtue of the Notification issued by the Government of A.P., in G.O.Ms.No.11-A, dt.16-3-89. After the issue in C.S.No.1 of 1951 this Court had held that the Maqbara (burial ground) alone is a private wakf and that the adjoining area are matruka properties of the Nawab and the property occupied by the petitioner was allotted to Nawab Mir Mouzzam Hussain.

It is further stated that when the A.P Wakf Board sought to dispossess the petitioner, he obtained an injunction from the Civil Court and subsequently when the

injunction was vacated, he filed CMA No.75 of 1993 and when the same was dismissed, the petitioner preferred CRP No.439/94 and obtained interim injunction and the same is still pending before this Court. It is the further case of the petitioner that when the M.R.O., Golconda Mandal, on 9-10-1993 sought to threaten the petitioner to remove the shed, he filed W.P.No.15342 of 1993 against the present respondents herein, wherein this Court by an order dated. 20-10-1993 observed that there has been no notice to the petitioner and directed the respondents not to evict the petitioner except in accordance with law. As such, the respondents by a notice signed on 23-10-1993 purported to have issued under Section 7 of the A.P. Land Encroachment Act, 1905, the 2nd respondent issued a show cause notice claiming that Sy.No.49 is a Government Poramboke land, for which though the petitioner had submitted a reply on 3-11-1993, till date no final order or decision thereon has been communicated to him. It is further stated that on 21-7-1995 the 2nd respondent with a posse of workmen and other functionaries, high-handedly and hastily broke the compound wall and carried away the gate and also threatened to demolish the workshop of the petitioner. Apprehending the danger of demolishing the workshop by the respondents, the petitioner filed the present writ petition.

Heard the counsel on either side.

Perused the material on record. The averments made in the affidavit filed in support of the writ petition goes to show that these are all the disputed questions of facts and more so from the averments made it is clear that the petitioner is only a lessee of the land from the Managing Committee of the Maqbara Fakar-ul-Mulk, and according to the counsel for the petitioner the A.P. Wakf Board is claiming the property. In view of the above facts and circumstances, which involved the question of title, it has to be observed that it is not open for this Court to go into the above aspects in this writ petition by exercising the powers vested under Article 236 of the Constitution of India, therefore, the writ petition is liable to be dismissed and is accordingly dismissed.

The writ petition is accordingly dismissed. No costs.

Dt. 23/12/2004 Justice T Meena Kumari

Kvrk

To

1 The Collector, Hyderabad District,
Nampally Station Road, Hyderabad.
2 The Mandal Revenue Officer, Golconda Mandal, Hyderabad.

3. Two CCs to GP for Revenue, High Court Buildings, Hyderabad (OUT)

4. Two CD copies.

THE HON'BLE SMT JUSTICE T. MEENA KUMARI

WRIT PETITION NO. 16461 OF 1995

23RD DECEMBER 2004